APPENDIX

A

The Expiration of Budget Enforcement Procedures: Issues and Options

The major enforcement procedures that have governed federal budgeting for more than a decade—the annual limits on appropriations (discretionary spending) and the pay-as-you-go (PAYGO) requirement for new mandatory spending and revenue laws—expired on September 30, 2002. Originally enacted in the Budget Enforcement Act of 1990 (BEA), the procedures were devised as part of a broad political agreement reached in that year to reduce and then eliminate budget deficits. Initially set to expire in 1995, the procedures were extended twice—in 1993 and 1997—as part of two subsequent budget agreements also aimed at reducing and eliminating deficits.

The discretionary spending limits and PAYGO requirement replaced the fixed deficit targets that were established by the Balanced Budget and Emergency Deficit Control Act of 1985 (known as the Gramm-Rudman-Hollings Act). The deficit targets imposed a rigid budgetary goal—eliminating deficits over a specified number of years—and set in place an automatic process, known as sequestration, to carry that out. However, the fixed targets were not linked to any political agreement on the policy changes needed to achieve them. Moreover, they were overtaken by the budgetary effects of lower-than-expected economic growth. In essence, the deficit targets were unrealistic.

The BEA represented a different approach to budget discipline and control. The discretionary spending limits and PAYGO requirement applied only to new laws—those enacted after each of the three deficit-reduction agreements of the 1990s—and were intended to ensure that the net budgetary effects of those laws would not increase projected deficits (or lower projected surpluses). They did not call for additional changes in budget policies if economic or other changes unrelated to new laws caused the budget picture to worsen.

During most of the period that the BEA procedures were in place, federal fiscal fortunes improved significantly. Deficits declined steadily after 1992, and beginning in 1998, surpluses were recorded each year through 2001. The BEA framework contributed to that turnaround, but the effectiveness of those procedures started to erode as surpluses began to emerge. From 1999 to 2002, annual appropriations exceeded the discretionary caps on new budget authority and outlays set in 1997 by large amounts (*see Figure A-1*). Over the same period, new laws affecting direct spending and revenues were enacted with significant costs but without offsetting savings. Despite those trends, large surpluses continued to accumulate because of the surge in tax revenues stemming mainly from robust economic growth.[1] But in 2001, the economy slowed significantly. The budgetary impact of that slowdown, along with the impact of legislation enacted to respond to it and to the terrorist attacks of September 11, 2001, among other factors, brought back a deficit in 2002.

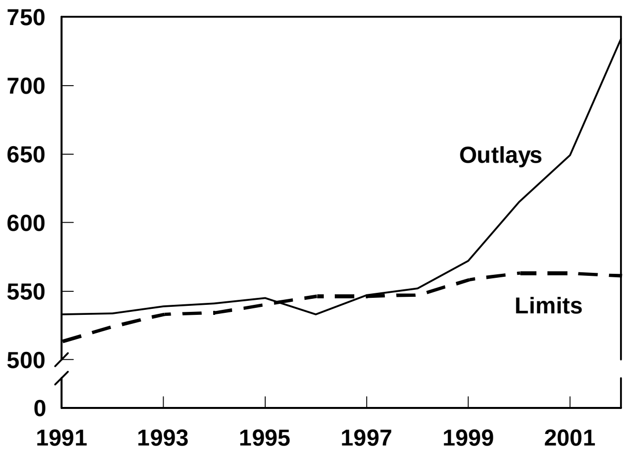
Ironically, the deficit returned just as the BEA procedures expired. Although the BEA was enacted as a temporary

1. For a more detailed discussion of the economic and other factors behind the growth in revenues from the late1990s to 2001, see Chapter 3.

Figure A-1.

Actual Discretionary Outlays Compared with the Spending Limits as Originally Enacted

(In billions of dollars)



Source: Congressional Budget Office.

means of discipline, it became accepted by many as an effective framework, under the right conditions, for imposing long-term budgetary constraint. Yet despite the return to deficits, whether a consensus can be formed in the near future to resurrect that framework is unclear. Competing priorities, such as the costs of funding the war on terrorism, reviving the economy, and providing prescription drug coverage for the elderly, may make a consensus on fiscal discipline difficult to reach. So could the current outlook for the budget. Although the budget was in deficit for 2002, CBO's current projections show deficits declining after 2003 and small surpluses reemerging by 2007. Those projections, however, reflect current policies and the current economic forecast, both of which are almost certain to change.

In addition to the many short-term pressures on the federal budget, the government's long-term fiscal condition is jeopardized by the increased health and retirement spending that will be required under current law for the baby-boom generation. The prospect of large budget deficits, both in the short term and the long term, suggests that some framework for budgetary discipline may be desirable.

During the 108th Congress, lawmakers may consider making changes in the budget process to improve budgetary discipline or achieve other goals. This appendix reviews the provisions of the BEA that expired at the end of fiscal year 2002, briefly summarizes the budget procedures that remain in effect, evaluates the effectiveness of the BEA, and broadly outlines some of the major options available to lawmakers for the budget process.

Overview of the Budget Enforcement Act and Expired and Expiring Provisions

The BEA built on an existing framework of budget enforcement procedures. The Balanced Budget and Emergency Deficit Control Act of 1985 established a schedule of fixed, declining deficit targets for every fiscal year beginning in 1986 and leading to a target of zero in 1991. The Deficit Control Act also created the procedure of sequestration to automatically cut spending for many federal programs if the deficit for a fiscal year was estimated to exceed the target level. A sequestration, if necessary, would be carried out by an executive order that the President would issue under the terms of a sequestration report from the Comptroller General of the United States, the head of the General Accounting Office. That report was to be based on a joint report by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO).

In 1986, the Supreme Court held in *Bowsher v. Synar* that it was unconstitutional for the President's sequestration order, an executive action, to be determined by a report from the Comptroller General, an official accountable to the Congress.[2] Thus, the Deficit Control Act was modified to give OMB sole authority to prepare the estimates and calculations used to trigger a sequestration order. As part of that change, CBO was required to issue advisory sequestration reports. The 1987 revision to the law also

2. The President's fiscal year 1986 sequestration order, issued under the invalidated procedure, was subsequently ratified by law (Public Law 99-366, approved on July 31, 1986) using a "fallback" legislative procedure provided for under the Deficit Control Act.

Table A-1.

The Deficit Compared with the Gramm-Rudman-Hollings Targets

(In billions of dollars)

	1986	1987	1988	1989	1990	1991	1992	1993
Original Deficit Target	172	144	108	72	36	0	n.a.	n.a.
Revised Deficit Target	n.a.	n.a.	144	136	100	64	28	0
Actual Deficit	221	150	155	152	221	269	290	255
Amount Above the Original Target	49	6	47	80	185	269	n.a.	n.a.
Amount Above the Revised Target	n.a.	n.a.	11	16	121	205	262	255

Source: Congressional Budget Office.

Notes: n.a. = not applicable.

The Balanced Budget and Emergency Deficit Control Act of 1985 (the Gramm-Rudman-Hollings Act) contained the original deficit targets; the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 contained the revised targets.

revised the deficit targets and extended them through 1993.[3]

Although deficits shrank somewhat in the late 1980s, they failed to meet the statutory targets—in some years by substantial margins (*see Table A-1*). The Deficit Control Act set targets, both original and revised, that were unrealistic in light of worsening economic conditions. Consequently, there was a strong incentive to adopt excessively optimistic economic assumptions in the estimates and calculations used to determine whether the deficit target for the year had been exceeded. For those reasons and others, actual deficits remained above the targets during the years that the law was in effect.

The Budget Enforcement Act

To strengthen the budget process, the BEA was enacted in the fall of 1990 as an amendment to the Deficit Control Act. The BEA was part of a multiyear agreement to reduce deficits that was embodied in the Omnibus Budget Reconciliation Act of 1990 as title XIII. Representing a different philosophy of deficit control, the BEA established procedures to ensure that the deficit reductions enacted in the 1990 budget agreement would be carried out. With the BEA, lawmakers enacted rules that would hold them accountable for changes in the deficit due to new legislation. Lawmakers did not intend for the BEA to deal with the budgetary effects of economic and technical factors outside of their immediate control—the factors that played the most significant role in the ineffectiveness of the Gramm-Rudman-Hollings deficit targets.

The BEA established a budget enforcement framework that divided the budget into two parts. Discretionary spending, which is provided and controlled in appropriation acts, would be subject to annual aggregate limits on budget authority and outlays. Laws affecting mandatory spending and revenues would be covered by a PAYGO procedure to prevent those laws from increasing the deficit. A breach of the discretionary spending caps would lead to reductions only in discretionary programs, and a breach of the PAYGO control would trigger cuts only in certain mandatory programs. Although the Deficit Control Act's targets were retained, they essentially became moot because they were adjusted annually for changes in economic and technical factors and the budgetary effects of any new legislation were controlled by the sequestration procedure that enforced the discretionary spending limits and PAYGO requirement.

Originally set to expire at the end of fiscal year 1995, the discretionary spending limits and PAYGO requirement were amended and extended twice, in 1993 and again in 1997, as a part of two subsequent multiyear deficit-reduction agreements. In each extension, the basic framework of the BEA was continued without major substantive changes. With the emergence of surpluses in

3. The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, title I of P.L. 100-119.

1998, some people asserted that the PAYGO requirement should be applied in a fiscal year only if new mandatory spending or tax laws were estimated to cause deficits to return. However, both OMB and CBO, with the concurrence of the House and Senate Budget Committees, continued to prepare PAYGO estimates and sequestration calculations without regard to estimates of the deficit or surplus for a particular fiscal year.

The discretionary spending limits were set forth in section 251 of the Deficit Control Act (as amended by the BEA). In some years, the limits were further divided to apply to different categories—such as defense, international, and domestic spending. Under the law, estimated discretionary spending could not exceed the limit for each category. If OMB determined that it did, the President was required to cancel budgetary resources available for that category by the amount of the breach. Certain programs were exempt from a discretionary sequestration, but most programs in the breached category were faced with a uniform percentage reduction in spending.[4]

Three times each year, OMB adjusted the limits, as directed in section 251. Adjustments were allowed for changes in concepts and definitions (such as reclassifying spending from one category to another); changes in inflation from the level assumed at the time that the caps were set (repealed as part of the 1997 extension of the caps); emergency requirements; and special allowances for certain types of spending, such as continuing disability reviews under the Social Security program and certain payments to the International Monetary Fund. The largest and most significant adjustment for the entire 1991-2002 period was for emergency spending. Under the BEA, the limits could be adjusted for the full amount of any appropriation designated by both the President and the Congress as an emergency requirement. Unlike most of the other specified adjustments to the discretionary spending limits, there was no limit on the amount of the adjustment that could be made for emergency appropriations.

The PAYGO requirement (section 252 of the Deficit Control Act) generally stipulated that new mandatory spending or revenue laws enacted through fiscal year 2002 must be "budget neutral" (that is, not increase the deficit or reduce the surplus). OMB and CBO recorded the five-year budgetary effects of mandatory spending and revenue laws on a PAYGO scorecard.[5] (CBO's estimates were only advisory.) At the end of a Congressional session, OMB totaled the budgetary effects of laws enacted to date (as recorded on the scorecard). A positive balance on the PAYGO scorecard represented a net cost, whereas a negative balance signified net savings. If the balance was positive—caused an increase in the deficit or decrease in the surplus for that fiscal year—a PAYGO sequestration (an automatic reduction in mandatory spending) was required to offset the increase in the deficit or decrease in the surplus. However, nearly all mandatory spending was exempt from a PAYGO sequestration.

Expired Provisions

Section 251 of the Deficit Control Act expired on September 30, 2002. Thus, the discretionary spending limits and the enforcement mechanisms for those limits are no longer in effect.

For laws enacted after fiscal year 2002, the PAYGO requirement no longer applies.[6] Thus, CBO and OMB are no longer required to track the five-year budgetary effects of new mandatory spending and revenue laws for the purposes of PAYGO enforcement. For laws enacted through fiscal year 2002, the PAYGO enforcement mechanism

4. The BEA also created a "look-back" sequestration procedure for occasions when supplemental appropriation acts pushed spending above the caps. If the breach occurred before the last quarter of the fiscal year, the sequestration occurred seven days after the enactment of the supplemental appropriation law. If the breach occurred in the last quarter, that category's limit for the next fiscal year would automatically be reduced by the excess amount.

5. CBO also prepares PAYGO estimates that cover a 10-year period to assist the Senate in enforcing a separate PAYGO requirement in that body (see section 207 of House Con. Res. 68, 106th Congress). That requirement expires on April 15, 2003 (see Senate Res. 304, 107th Congress).

6. Unlike section 251, section 252 of the Deficit Control Act did not expire at the end of 2002. Rather, section 252 states explicitly that laws enacted after fiscal year 2002 shall not be subject to the PAYGO requirement.

Box A-1.

Expiring Voting Requirements for a Three-Fifths Majority to Waive Budget Points of Order in the Senate

The Congressional Budget and Impoundment Control Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985 include several provisions that act as rules of the House or Senate enforced through points of order. In general, points of order raised under those provisions would prohibit the Congress from considering certain types of budget legislation.

In the Senate (under section 904(c) of the Congressional Budget Act), many of those points of order may be waived —or an appeal of the presiding officer's ruling sustained —only by the affirmative vote of three-fifths of all Senators (60, if there are no vacancies). Several of those voting requirements for a super majority were scheduled to expire on September 30, 2002. However, the Senate extended them through April 15, 2003 (see Senate Resolution 304, adopted on October 16, 2002).

Following is a list of the points of order under the Congressional Budget Act and the Deficit Control Act that are covered by the Senate's expiring requirements for a super majority:[1]

Congressional Budget Act

- **Section 301(i)**: prohibits consideration of legislation reducing the Social Security surpluses set forth in the budget resolution
- **Section 302(c)**: prohibits consideration of annual appropriation bills for a fiscal year before the House or Senate Appropriations Committees make allocations of discretionary spending to their respective subcommittees
- **Section 302(f)**: prohibits consideration of legislation that exceeds allocations of spending to committees made pursuant to the most recently adopted budget resolution
- **Section 310(g)**: prohibits consideration of reconciliation legislation that makes changes in Social Security
- **Section 311(a)**: prohibits consideration of legislation that exceeds aggregate levels of revenues or spending in the most recently adopted budget resolution
- **Section 312(b)**: in the Senate, prohibits consideration of legislation that exceeds the discretionary spending limits in the Deficit Control Act
- **Section 312(c)**: in the Senate, prohibits consideration of budget resolutions that exceed the maximum deficit amounts in the Deficit Control Act

Deficit Control Act

- **Section 258(a)(4)(C)**: prohibits consideration of amendments to a joint resolution that suspends certain provisions of the Congressional Budget Act and the Deficit Control Act in the case of war or low economic growth
- **Section 258A(b)(3)(C)(i)**: prohibits consideration of amendments that are not germane to a joint resolution modifying a sequestration order
- **Section 258B (various clauses)**: prohibits consideration of amendments that would increase deficits and that are not germane to a joint resolution approving changes proposed by the President to a sequestration of defense programs
- **Section 258C(a)(5)**: prohibits consideration of special reconciliation legislation that would exceed the maximum deficit amount under the Deficit Control Act
- **Section 258C(b)(1)**: prohibits consideration of certain amendments to resolutions and reconciliation bills under the special reconciliation process established in this section

1. Points of order under the provisions of the Congressional Budget Act listed here—unlike the Senate's temporary voting requirements—do not expire. Unless noted otherwise, they apply in both the House and the Senate. The listed points of order under the Deficit Control Act apply in the Senate only. Except for section 258B (which expired at the end of fiscal year 2002), those provisions expire at the end of fiscal year 2006.

exists through fiscal year 2006. However, Public Law 107-312, enacted on December 2, 2002, instructed OMB to change the existing PAYGO balances for all years to zero. That law eliminated the possibility of a sequestration of mandatory spending as a result of legislation enacted before the end of 2002.

Certain Senate procedures generally linked to the discretionary spending limits and PAYGO requirement also were scheduled to expire at the end of fiscal year 2002. Specifically, in section 904 of the Congressional Budget and Impoundment Control Act of 1974, the Senate established that 60 votes—instead of a simple majority—would be required to waive certain budget points of order under that law and the Deficit Control Act.[7] Most of those requirements for a super majority were scheduled to expire on September 30, 2002. However, on October 16, 2002, Senate Resolution 304 extended most of the waiver requirements through April 15, 2003 (*see Box A-1 on page 113*).

Senate Resolution 304 also extended a point of order (and the accompanying requirement for 60 votes for a waiver) that enforces a separate PAYGO requirement in the Senate.[8] That point of order is set forth in section 207 of the 2000 budget resolution (House Con. Res. 68, 106th Congress). It is intended to prohibit the Senate from considering any new direct spending or tax measures that would cause or increase an on-budget deficit (that is, a deficit excluding the Social Security trust funds and net outlays of the Postal Service) over a 10-year period that begins with the first year covered by the most recently adopted budget resolution.

Evaluating the BEA

Through the mid-1990s, when consensus remained to rein in deficits, the BEA appeared to curb the growth in both discretionary and mandatory spending. In nominal terms, total discretionary budget authority was $35 billion lower in 1997 than in 1991, although total discretionary outlays were $14 billion higher (*see Table A-2*). Those figures, however, mask substantial programmatic shifts (that were aided by the end of the Cold War) from national defense to nondefense programs. In 1997, both defense budget authority and outlays were well below the amounts recorded in 1991; that budget authority had dropped by $66 billion, and outlays had declined by $48 billion. Over the period, nondefense budget authority increased by $31 billion and nondefense outlays jumped by $62 billion. Between 1991 and 1997, most new revenue and mandatory spending laws that were enacted were consistent with the PAYGO requirement to be deficit neutral; end-of-session balances on the PAYGO scorecard consistently showed zero or net reductions in the deficit.

In 1997, lawmakers extended both the discretionary spending limits and the PAYGO provisions of the BEA as part of an agreement to eliminate the deficit by 2002. But that goal was reached in the very next year, as the government recorded its first surplus in nearly 30 years. That surplus eliminated the essential purpose of the BEA —to combat and control deficits. In this new fiscal landscape, with projections showing mounting surpluses for the coming decade, the BEA could not restrain the pressures to spend more.

To comply with the letter of the law while boosting discretionary spending above the statutory limits, lawmakers used a number of approaches—including advance appropriations, delays in making obligations and payments, emergency designations, and specific directives. For example, in 1999 and 2000, lawmakers enacted emergency appropriations totaling $34 billion and $44 billion, respectively—far above the annual average for such spending from 1991 to 1998 (*see Figure A-2*). Comparable amounts were enacted for 2001 and 2002 mainly

7. In general, a point of order is an objection that may be raised by a Member of Congress against a piece of legislation or a procedure on the grounds that it violates a rule of the House or Senate. The presiding officer, advised by the Parliamentarian, decides on the basis of the specific rule and precedents under it whether the point of order is valid. The decision of the presiding officer generally is subject to appeal by the House or Senate. For points of order under the Congressional Budget Act, the presiding officer also relies on estimates provided by the House or Senate Budget Committees. In the Senate, points of order under that law may be waived by motion, which in many cases must be approved by a three-fifths vote. In the House, those and other points of order may be waived by adopting a "special rule"—a simple resolution reported by the Rules Committee that sets the terms and conditions for the House to consider legislation.

8. In this case, both the point of order and the 60-vote waiver requirement are scheduled to expire on April 15, 2003.

Table A-2.

Discretionary Spending Under the Budget Enforcement Act

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	Total, 1991-1997	Total, 1998-2002
Actual Spending[a] *Billions of Dollars*														
Defense														
Budget Authority	332	299	276	262	263	265	266	272	288	301	332	361	n.a.	n.a.
Outlays	320	303	292	282	274	266	272	270	275	295	306	349	n.a.	n.a.
Nondefense														
Budget Authority	214	232	247	250	238	236	245	257	294	284	332	374	n.a.	n.a.
Outlays	214	231	247	259	271	267	276	282	297	320	343	385	n.a.	n.a.
Total														
Budget Authority	546	531	523	513	501	501	511	530	582	584	664	735	n.a.	n.a.
Outlays	533	534	539	541	545	533	547	552	572	615	649	734	n.a.	n.a.
Percentage Change from Previous Year[b]														
Defense														
Budget Authority	9	-10	-8	-5	*	1	*	2	6	4	10	9	-4	7
Outlays	7	-5	-3	-3	-3	-3	2	-1	2	7	4	14	-3	7
Nondefense														
Budget Authority	11	9	6	1	-5	-1	4	5	14	-3	17	13	2	10
Outlays	7	8	7	5	5	-2	3	2	5	8	7	12	4	8
Total														
Budget Authority	10	-3	-2	-2	-2	*	2	4	10	*	14	11	-1	9
Outlays	7	*	1	*	1	-2	3	1	4	7	6	13	*	7
Spending Limits as Originally Enacted (Billions of dollars)														
Budget Authority	492	503	511	511	518	519	528	531	533	537	542	553	n.a.	n.a.
Outlays	514	525	534	535	541	547	547	548	559	564	564	562	n.a.	n.a.
Amount that Actual Spending Was Above or Below (-) the Original Limits (Billions of dollars)[c]														
Budget Authority	10	14	11	2	-16	-18	-17	-1	49	47	122	182	-14	399
Outlays	-14	-6	5	7	4	-15	**	4	13	51	85	172	-19	325
Emergency Budget Authority Excluding Spending in 1991 and 1992 on Desert Storm and Desert Shield (Billions of dollars)[c]														
Defense	0	0	1	1	2	1	2	3	18	18	14	18	8	70
Nondefense	1	9	5	12	6	4	7	3	17	26	15	29	44	90
Total	1	9	6	14	8	5	9	6	34	44	29	47	52	160

Sources: Congressional Budget Office; Office of Management and Budget.

Notes: n.a. = not applicable.

* = between -0.5 percent and 0.5 percent; ** = between -$500 million and $500 million.

a. Figures for actual spending reflect all spending provided in annual appropriation acts and classified as discretionary under the Budget Enforcement Act, including those amounts designated for emergencies.

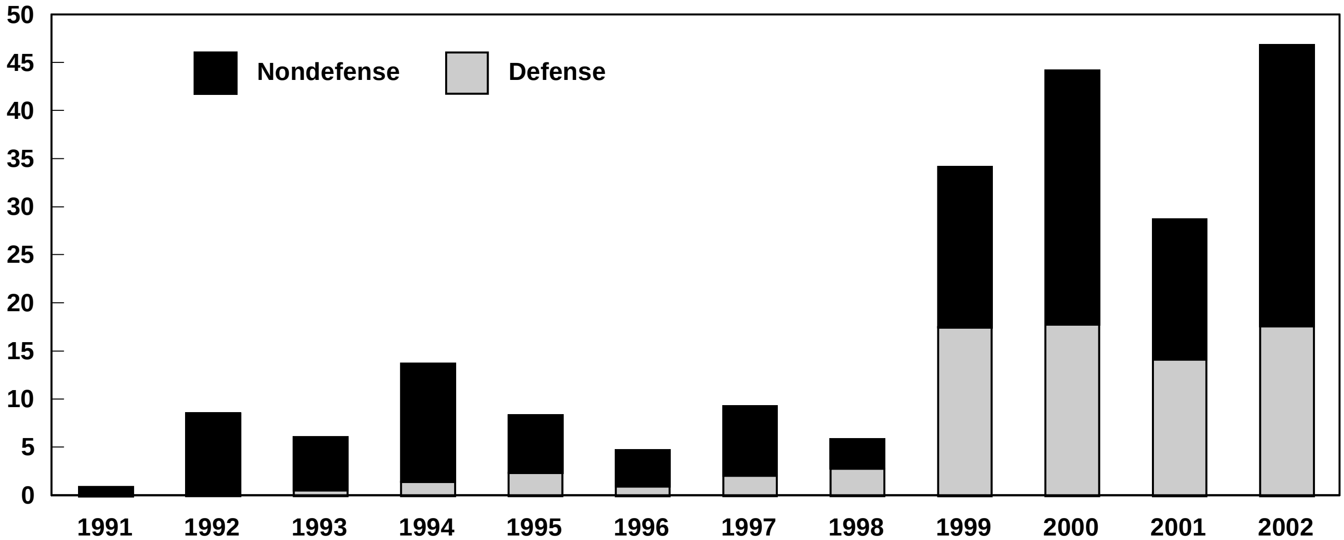
b. For the periods of 1991 to 1997 and 1998 to 2002, totals represent the average annual growth from the first year to the last.

c. The Office of Management and Budget estimates that in 1991, emergency budget authority and outlays for Desert Storm and Desert Shield totaled $44.2 billion and $33.2 billion, respectively. In 1992, those amounts were $14.0 billion and $14.9 billion, respectively. Those figures are not included in this section of the table because they were offset by foreign contributions.

Figure A-2.

Emergency Budget Authority Under the Budget Enforcement Act of 1990

(In billions of dollars)



Source: Congressional Budget Office.

Note: Excludes spending in 1991 and 1992 for Desert Storm and Desert Shield because that spending was offset by foreign contributions.

in response to the terrorist attacks of September 11, 2001. During the first six years of the BEA (1991 through 1997), emergency appropriations totaled $52 billion; during the four years following the 1998 surplus, emergency appropriations totaled more than three times that amount.

To accommodate increased nonemergency spending for 2001, lawmakers increased the caps on budget authority and outlays by $99 billion and $59 billion, respectively. The following year, they increased the limits on budget authority and outlays by even larger amounts—$134 billion and $133 billion, respectively. From 1998 through 2002, total discretionary appropriations grew at an average annual rate of 8.5 percent; by comparison, from 1991 through 1997 such spending declined at an average annual rate of 1.1 percent.

Similarly, after the emergence of surpluses, lawmakers enacted legislation to increase mandatory spending or reduce revenues but used legislative directives to statutorily comply with the PAYGO requirement. Thus, for 2001 and later years, lawmakers eliminated more than $700 billion in positive balances—that is, amounts that would have triggered a PAYGO sequestration—from the scorecard (*see Table A-3*). Most of that amount stemmed from the estimated drop in revenues attributed to the Economic Growth and Tax Relief Reconciliation Act of 2001. By contrast, during the earlier years of the BEA, the balances on the scorecard were zero or negative, and lawmakers statutorily removed negative balances so that those savings could not be used to offset the costs of new mandatory spending or revenue legislation.

During the 12 years that the threat of a discretionary sequestration was present, sequestrations were ordered only twice, both in 1991 (the first year that the spending limits were in effect) and both for relatively insignificant amounts. One of the sequestrations was rescinded by subsequent law; the second led to estimated savings of $1.4 million (discretionary spending totaled $533 billion in 1991). For laws affecting mandatory spending or revenues, a PAYGO sequestration has never been triggered.

Interpreting the absence of large sequestrations over the BEA's history is difficult. In some years, especially 1991 to 1997, perhaps the threat of sequestration served as an effective deterrent to legislation that would have violated

Table A-3.

Balances Eliminated by Statute from the Pay-As-You-Go-Scorecard

(In billions of dollars)

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total, 1997-2006
Eliminated Balance	-9	-3	0	-3	90	65	127	150	142	144	701

Source: Congressional Budget Office using data from the Office of Management Budget's final sequestration reports, fiscal years 1991 to 2003.

Note: Positive numbers indicate an increase in the deficit or reduction in the surplus; that is, eliminating positive balances removed the need for a PAYGO sequestration. Negative numbers indicate a decrease in the deficit or increase in the surplus; that is, eliminating such balances made them unavailable to be used as an offset to additional mandatory spending or revenue reductions.

the spending limits or PAYGO requirement. More recently, the absence of sequestrations may simply reflect the lack of consensus among lawmakers to guard the bottom line of the budget. With the emergence of large surpluses came the willingness to enact legislation to increase the caps substantially or eliminate the positive PAYGO balances. The lack of sequestrations may also have reflected shifting priorities; for example, legislative efforts aimed at fighting the war on terrorism or reviving the economy may have been deemed more important than avoiding a return to budget deficits. In a sense, that change in priorities may confirm a premise underlying the BEA—that a budget enforcement framework works best when there is a firm consensus on the fiscal goal or goals to be achieved and the policy changes needed to achieve them.

Options

As lawmakers consider whether or how to change the budget process, the choices they face divide broadly into three categories:

- Do nothing, which leaves the caps on discretionary spending and the PAYGO requirement expired, and set budget policy anew each year without statutory constraints;
- Reinstate the structure of caps on discretionary spending and PAYGO; or
- Create a different budget process.

Maintain the Status Quo

Lawmakers could decide not to reinstate the caps on discretionary spending and the PAYGO requirement. The budget process essentially would return to the state that existed before the Gramm-Rudman-Hollings Act.

In general, the federal budget process is an amalgam of procedures that lawmakers and public officials use to establish, control, and account for spending and revenue policies. The budget process includes preparation of the President's budget by the executive branch, the Congressional budget process (centered on a Congressional budget resolution and, in some years, on reconciliation legislation), the authorization and appropriation process, execution of budget law (including impoundment control, a procedure under the Congressional Budget Act for deferring or rescinding appropriated funds), and financial management rules. Those fundamental procedures and practices, grounded in permanent statutes, Congressional rules, agencies' regulations, and longstanding practice, do not expire.

Under the Budget and Accounting Act of 1921, the President submits his budget on the first Monday in February. Under the Congressional Budget Act, the Congress's first major action is to adopt the annual budget resolution, which does not become law. The budget resolution is scheduled to be adopted by April 15. It is usually completed after that date, in some years by substantial margins, because final agreement on a Congressional budget plan often is difficult to reach. The budget resolution serves as a blueprint for Congressional action on separate pieces of revenue and spending legislation. In addition, the resolution's aggregate levels of revenues and spending, and spending allocations made to Congressional committees are enforced by points of order that Members of Congress may raise against individual revenue or spending bills as they are considered by the House or Senate. In general, if a point of order brought under the Congressional Budget Act is sustained (or is not waived), the offending legislation may not be considered further. The budget resolution may also instruct Congressional committees to produce reconciliation legislation that conforms permanent revenue or spending laws within their jurisdiction to the levels set forth in the resolution.

The existing budget process, based on the President's budget and the Congressional budget resolution, provides the means for lawmakers to establish and enforce major changes in budget policies. The process has served as a conduit for major policy initiatives and multiyear deficit-reduction agreements, which typically have been put in place in legislation developed to carry out reconciliation directives in budget resolutions. However, when consensus on such policies has not emerged, the process has stalled. To wit, the Congress was unable to reach final agreement on the budget resolutions for fiscal years 1999 and 2003, and action on appropriation bills for those years was delayed. Whether or not the BEA framework (or something like it) is renewed, political agreement on the budget is probably the largest single factor in ensuring that the budget process functions smoothly.

Reinstate and Adjust the Structure Established by the Budget Enforcement Act

This option essentially would parallel the extensions of the BEA that were enacted in 1993 and 1997. In those years, lawmakers extended the caps and PAYGO requirement as part of new multiyear budget agreements to reduce deficits. Lawmakers have not extended those restraints absent such an agreement.

Despite recent experience, the underlying philosophy of the BEA—that appropriations should be enacted within enforceable limits and that the estimated costs of new tax and mandatory spending legislation should generally be budget neutral—proved to be effective in the 1990s when deficits existed and appeared likely to continue or grow. In essence, the political consensus to reduce those deficits helped the BEA framework to succeed.

As lawmakers consider whether or how to reinstate those procedures, they may want to examine how the previous process could be improved. Some issues include the following:

- **Budget "Firewalls" for Discretionary Spending**. In some years, lawmakers created separate caps for spending on defense, domestic, international, transportation, victims of crime, and conservation programs. Separate sublimits within overall caps may serve important policy goals. But lawmakers give up flexibility to meet other needs within those caps when they carve out separate limits for certain programs. In addition, spending priorities may shift from year to year. If the overall caps were extended for a five-year period—as they have been in the past—establishing sublimits might make it difficult to shift priorities, or, conversely, might prompt lawmakers to again employ the spending devices for which they were criticized in recent years.

- **Emergency Spending**. Some observers have questioned whether much of emergency spending is for true emergencies or is simply a way to appropriate more funds under tight discretionary caps without having to find offsets. The BEA exemption for emergency spending required only that the President and the Congress both agree on the amounts to be designated; it did not limit those amounts or restrict the purposes for which they could be provided. Some analysts feel that the emergency exemption should be replaced with a system of budgeting for emergency needs that is based on an average annual amount of emergency spending appropriated in previous years. Others would place a strict limit on the amount of funding that could be designated as an emergency requirement. Another approach would be to establish a statutory definition of emergencies to guide legislative action on such spending. Those approaches also could be combined. However it is fashioned, an emergency safety-valve procedure of some type that allows additional resources to be provided for unexpected contingencies is probably an important component of an effective framework for budgetary discipline.

- **Inflation Adjustment to the Discretionary Caps**. Until 1997, the BEA provided that the caps on discretionary spending were to be adjusted for changes in the rate of inflation from that anticipated when the caps were originally established. Although inflation has been low in recent years, and in earlier years actually led to a reduction in the caps, restoring an inflation adjustment may help to sustain political agreement on cap levels over a longer period.

- **Sequestration**. The effectiveness of sequestration has been questioned. That only two small sequestrations have been ordered, that caps on discretionary spending have been adjusted or increased by large amounts, and that large PAYGO balances that would have triggered a sequestration have been eliminated by law all point to potential limitations in the procedure. However, the absence of sequestration in some years, especially during the early to mid-1990s, may indicate that the procedure has served at certain times as an effective deterrent to policy changes that would have increased deficits or lowered surpluses.

  Nevertheless, if the sequestration procedure is to be resurrected, one issue that lawmakers may need to address is the number of mandatory programs that are exempt from a PAYGO sequestration. If such a sequestration was triggered, the amount of resources available to cut—because of specific exemptions and special rules for Social Security, Medicare, Medicaid, federal retirement, and other entitlements—would be quite limited. The brunt of the sequestration would fall on relatively few mandatory programs. For fiscal year 2003, for example, CBO estimates that only about 4 percent of total mandatory outlays would have been subject to a PAYGO sequestration.

Make Major Changes in the Budget Process

Recent experience with the budget process has caused frustration among some lawmakers, who have raised doubts about the effectiveness of simply reinstating the BEA procedures. With the expiration of the spending caps and PAYGO rules, lawmakers could enact broader reforms.

- **Convert to a Biennial Budget Cycle**. Proposals for biennial budgeting generally call for policymakers to enact budget legislation one year and to oversee and evaluate activities in the next. Supporters of biennial budgeting are increasingly concerned that the requirements of the annual budget process are overwhelming policymakers and public officials. They argue that the seemingly incessant demands of that process detract from other functions of government—such as long-range planning and oversight—that are equally, if not more, important. If budget and nonbudget issues could be separated in the legislative process, biennial budgeting might help ease those problems, improve oversight, and relieve the pressures on the appropriation process. However, changing to a two-year cycle also might diminish the effectiveness of Congressional control of spending in the appropriation process and could make it more difficult to adjust to rapidly changing budget and economic conditions.

- **Make the Budget Resolution a Law**. Each year, the President and the Congress propose separate budget plans. When those plans are fundamentally different, final agreement on tax and spending legislation is difficult to reach, as the delay and gridlock in the budget process in 2002 illustrated. The President and the Congress could be required to enact the budget resolution into law each year.

  On the one hand, making the budget resolution a law could promote earlier agreement on priorities between the President and the Congress. A statutory budget resolution also might be a more effective means to pair new budget policies with the appropriate enforcement procedures, such as discretionary caps and a PAYGO requirement. Combining budget policies and enforcement procedures in that manner also might be a better way to ensure that current enforcement procedures reflect lawmakers' most recent consensus. On the other hand, a statutory resolution would probably not make overall agreement on the budget easier, and in some years it might simply sharpen differences or elicit a veto when agreement could not be reached. Also, if a requirement to enact the budget resolution into law caused final action on the resolution to be delayed further, Congressional action on regular appropriation bills and on revenue or other spending legislation could become stalled as well.

- **Adopt Mandatory Spending Controls**. Since the 1960s, outlays for entitlements—such as Social Security, Medicare, and Medicaid—and other mandatory spending programs have grown faster than those for other programs. If current policies remain unchanged, CBO projects that mandatory spending (not including net interest) will continue to grow faster than other spending, increasing from about 60 percent of total outlays in 2002 to nearly 70 percent in 2013 (see Chapter 4). And long-term budgetary pressures caused by the aging of the baby-boom generation will only exacerbate that trend.

As a result, some observers advocate mandatory spending caps enforced by sequestration, patterned after the discretionary spending caps, as an option for controlling entitlement costs. Total mandatory spending could be capped at levels that permitted a limited rate of growth, and any spending over that level would automatically result in an across-the-board cut. However, such an approach would be difficult to implement. And if a significant amount of mandatory spending was exempted from sequestration, as it was under the BEA's PAYGO requirement, the cap might be ineffective or could distribute the burden of enforcement unequally among federal programs.

Others wonder if most entitlements should simply lose that status and be funded annually along with discretionary appropriations. Current trends appear to be in the opposite direction, however, with recent expansions of entitlement programs, such as increases in farm price supports and veterans' benefits, and proposed expansions, such as that for a Medicare prescription drug benefit,

- **Establish a Mechanism Like the Line-Item Veto—Expedited Rescission or Separate Enrollment**. The Supreme Court invalidated the Line Item Veto Act in 1998. The act, enacted in 1996, set in place a procedure for the President to cancel certain provisions of law providing targeted tax benefits or spending that he deemed wasteful or unnecessary. But the Court held that the procedure violated the presentment clause of the Constitution.[9] Since then, at least two alternatives have been introduced in the Congress that supporters hope will revive the budget control device in a constitutional fashion. The first, expedited rescission, would ensure that the Congress voted on the President's proposed cancellations. The other, separate enrollment, would require each tax benefit or spending "item" in a bill passed by the Congress to be enrolled separately for the President's approval.

  Spending control disciplines similar to the line-item veto continue to attract interest because they are viewed as a way to control "pork barrel" spending. However, it is unclear whether such procedures would save significant sums or would simply shift spending priorities to those favored by the President.

- **Budget Concepts**. Some experts are pondering whether it is time to reexamine the budget concepts used in scoring new legislation; classifying and recording the effects of federal tax, spending, and borrowing policies; and presenting that information for use by the public and policymakers (*see Box A-2*). That task was last addressed by the 1967 President's Commission on Budget Concepts, whose report continues to provide the theoretical framework for federal budgeting. However, a lot has changed over the past 30 years or so, and it may be time both to reexamine the findings of the 1967 commission and to study the many new issues that complicate federal budgeting today.

Conclusion

The imperative to reduce and control deficits, seen as a crisis, prompted lawmakers to fashion the BEA framework of budget constraints. While the BEA contributed to liquidating chronic deficits, the effectiveness of those constraints was mixed. The surpluses, though short-lived, eliminated the consensus that had formed to deal with the nation's financial exigency and thereby undermined the BEA. Now, the reemergence of deficits comes as the nation attends to the war on terrorism and to reviving economic growth, taking the focus away from long-term

9. Article I, section 7. The Court held that the Line Item Veto Act would "authorize the President to create a different law—one whose text was not voted on by either House of Congress or presented to the President for signature." *Clinton v. City of New York*, 524 U.S. 417 (1998).

Box A-2.

Is It Time for a New Budget Concepts Commission?

The basic accounting rules generally followed in the modern budget process are set forth in the 1967 *Report of the President's Commission on Budget Concepts*. Although the report's recommendations for the most part have not been enacted into law, it is to this day the authoritative statement on federal budgetary accounting concepts and principles. The commission's most important recommendation was for a comprehensive federal budget. It recommended that the budget cover the full range of federal activities and that even borderline activities and transactions be covered unless there were compelling reasons to exclude them. Although the commission's guidelines continue to apply broadly to the budget process, they do not accommodate many of today's complex budget proposals and institutions.[1] Lawmakers and budget scorekeepers now face several fundamental questions:

- What is the appropriate scope of the budget? The commission's recommendation that the budget include all federal activities provides little or no guidance on how to treat Amtrak, public/private partnerships, and other hybrid entities.

- When should the financing for a program be classified as spending rather than as an offset to taxes? The line dividing federal revenue and spending laws has become blurred, as shown by the increasing use of refundable tax credits and certain fees as devices for expanding programs' budgetary resources.

- Does the use of trust funds for tracking earmarked revenues confuse more than it helps? Federal trust funds differ significantly from private-sector trust funds. They are simply accounting mechanisms, or accounts labeled as trust funds in law, that are established to earmark receipts for federal programs or purposes. Unlike private trust funds, federal trust fund balances (that is, an excess of receipts over expenditures) do not represent real economic assets, but instead are claims on the Treasury that, when redeemed, will have to be financed by raising taxes, borrowing from the public, or reducing benefits or other expenditures. Some people argue that federal trust funds should be treated differently in the budget process. That argument puts pressure on lawmakers to favor those trust funds in their annual budgetary deliberations and potentially limits their flexibility in setting broad budget policies and priorities.

- How can the federal government's effect on the economy be measured accurately? The purchase and sale of nonfederal debt and equities, important components of some proposals to reform Social Security, raise thorny issues of budgetary treatment that are important for estimating the budgetary impact of those proposals.[2]

1. See the Statement of Barry B. Anderson, Deputy Director, Congressional Budget Office, *Structural Reform of the Federal Budget Process*, before the House Committee on the Budget, July 19, 2001.

2. See Congressional Budget Office, *Evaluating and Accounting for Federal Investment in Corporate Stocks and Other Private Securities* (January 2003).

control of deficits. At the same time, fiscal pressures linked to the aging of the baby-boom generation are looming, and pressures to increase spending and reduce taxes are substantial. A review of the budget process might be desirable in order to ensure an appropriate framework for the important policy decisions that lie ahead. Moreover, a political consensus on those policies appears to be the most important factor in ensuring that the budget process—however it is constructed—functions smoothly.